

United States Senate

WASHINGTON, DC 20510-4804

ENERGY AND NATURAL
RESOURCES COMMITTEE
ARMED SERVICES COMMITTEE
SPECIAL COMMITTEE ON AGING

December 11, 2013

The Honorable Ben Bernanke
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, D.C. 20551

The Honorable Jacob Lew
United States Department of the Treasury
1500 Pennsylvania Avenue N.W.
Washington, D.C. 20220

The Honorable Thomas J. Curry
Office of the Comptroller of the Currency
400 7th Street, S.W., Suite 3E-218
Washington, D.C. 20219

The Honorable Martin Gruenberg
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

The Honorable Gary Gensler
U.S. Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

The Honorable Mary Jo White
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Dear Secretary Lew, Chairman Bernanke, Commissioner Curry, Chairman Gensler, Chairman Gruenberg, Chairwoman White:

We write regarding the recently finalized Volcker Rule requirements of Section 13 of the Bank Holding Company Act ("BHC Act") as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). We know the agencies embarked on a long, arduous process, and there is no doubt the financial industry needed this rule before we could truly move on from the 2008 financial crisis. However, we have said from the outset that community banks were not responsible for that crisis, and they should not have to pay the price for Wall Street's misconduct. We have consistently urged the agencies to ensure that community banks are protected from the broad brush of federal regulation.

The purpose of the Volcker Rule was to ensure that the trading activities of the big banks do not undermine the U.S. economy and financial stability, not to punish community banks. In finalizing the Volcker Rule, regulators have wisely sought to ensure that these community banks, which had nothing to do with the actions that necessitated the Volcker Rule in the first place, were not negatively impacted. Unfortunately, that cannot be said about the treatment of pools of trust-preferred securities ("TruPs") owned by community banks.

The Volcker Rule is not the appropriate vehicle for the regulators to revisit how community banks manage their portfolios of TruPs. Indeed, unless your agencies take action immediately, a sizable number of community banks will have to liquidate their performing pools of TruPs and take an accounting loss – hurting earnings and capital. The intent of these previously approved investments was to strengthen capital in community banks. If held to maturity, these securities would most likely not have mandated losses.

If the regulators stand by the misdirected application of the Volcker Rule to community bank TruPs, the impacts could be devastating to shareholders and the capital of a large number of community banks across

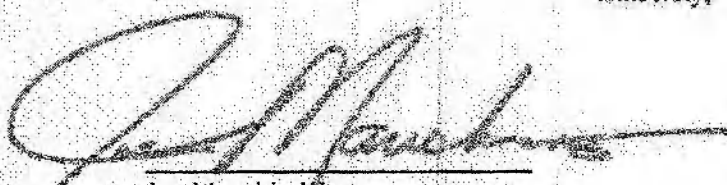
the country. These banks would be required to recognize a write-off in the current quarter for any unrealized losses from holding the security and would be required to liquidate the security by July 2015. If the bank was able to hold these securities until maturity, the anticipated loss would be zero. The unrealized losses embedded in the securities today are related to the illiquid market for these securities, rather than true credit losses.

In addition, the rule would not only require banks to mark the TruPs to current market prices, which are still somewhat depressed, but would also result in a fire sale from a required July 2015 divestment, which would further push prices down and could result in severe and unnecessary losses. One of the purposes of the Volcker Rule is to reduce the exposure of banks to the ups and downs of securities trading markets; yet the application of it to TruPs of community banks actually makes the situation worse.

These actions are completely unwarranted since the agencies could easily rely on their authorities to grant a carve-out or a grandfather status to banks under a certain asset size for their ownership of these types of securities acquired prior to the final rule. The agencies have admitted in their guidance for community banks that "[o]nly a small number of community banks own ... collateralized debt obligations ... backed by trust preferred securities." Accordingly, there is very little to no systemic risk for community banks to continue to own these securities. On the other hand, the effect on the banks to divest these securities in relatively short order would be devastating. It is obvious to conclude that the community banks deserve relief, such as an exception or a grandfather status from this rule.

As you probably know, several community banks have voiced serious concern and are truly fearful of their reporting requirements at the end of this year. We urge each of your agencies to take action swiftly to grant relief to those financial institutions that had nothing to do with the 2008 economic crisis, but will have everything to do with our economic recovery.

Sincerely,



Joe Manchin III
United States Senator



Roger Wicker
United States Senator



Mark Kirk
United States Senator